Supreme Court, U.S.
FILED
1995

No. 94-1443

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

RICHARD ADAMS and BALANCE CHOW,

Petitioners,

v.

FRED O. DICKINSON, III, and LAWTON CHILES,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Florida

REPLY MEMORANDUM OF PETITIONERS

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REPLY MEMORANDUM OF PETITIONERS

In their petition for a writ of certiorari, Petitioners showed that there were three grounds for granting the writ: (i) the Florida Supreme Court overlooked the requirements of *Dennis v. Higgins*, 498 U.S. 439 (1991), and *Howlett v. Rose*, 496 U.S. 356 (1990), by refusing to accept jurisdiction of Petitioners' claims under 42 U.S.C. §§ 1983 and 1988 while accepting jurisdiction of similar state-law causes of action; (ii) the decision below raises an important federal question on which state courts are sharply divided; and (iii) this Court has acknowledged the importance of resolving this issue by granting certiorari in *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, No. 94-688 (Jan. 6, 1995).

In their brief in opposition, Respondents do not raise any procedural grounds for denying the writ. They do not challenge Petitioners' claim that the federal question was properly raised and preserved at each stage of the state court proceeding. Respondents' Brief in Opposition ("Opp. Br.") 6-11. They do not dispute Petitioners' contention that there is no independent and adequate state ground for the decision below. Opp. Br. 16 ("a state law basis was not used . . . to deny Petitioners' federal remedy under § 1983"). And they do not dispute Petitioners' claim that the federal question raised in this case mirrors the question presented in *National Private Truck Council*. *See* Opp. Br. 20 (both are "state decisions finding that where there are adequate state remedies there is no need to turn to § 1983" in view of the Tax Injunction Act of 1937, 28 U.S.C. § 1341 (1988)). Instead, Respondents argue that the decision below does not conflict with *Dennis* and *Howlett*, and that the state courts are not in fact divided on this issue. Opp. Br. 11-21. Respondents are wrong.[1]

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[1] At one point in their brief, Respondents suggest that "[i]n the proceeding before the Florida Supreme Court there was virtually no discussion of 42 U.S.C. § 1983." Opp. Br. 9. Nothing could be further from the truth. Petitioners devoted 7 pages of their merits briefs to this issue, and their entire petition for rehearing to this issue; Respondents devoted 26 pages of their merits briefs to this issue; an

Respondents initially err in suggesting that *Dennis* and *Howlett* do not "require[]" state courts to entertain § 1983 claims in state tax cases. Opp. Br. 12. *Dennis* makes clear that § 1983 redresses tax statutes that violate the Commerce Clause (and indeed did not hesitate in permitting such a challenge to be raised through state courts). 498 U.S. at 451. *Howlett* makes clear that a state violates the Supremacy Clause through its "refusal to entertain . . . § 1983 claims" when it "entertains similar state-law actions against state defendants." 496 U.S. at 375. Accordingly, once a state opens its courthouse doors to certain types of state-law causes of action, it cannot discriminate against similar federal-law causes of action. Since Petitioners raised their § 1983 claim in courts of general jurisdiction that entertain related state-law causes of action, *see Howlett*, 496 U.S. 356 (addressing the authority of Florida courts of general jurisdiction), those courts were indeed required to entertain Petitioners' claim.

Howlett and *Dennis*, to be sure, did not address the Tax Injunction Act. But Respondents err in suggesting that the Act somehow alters this analysis. Opp. Br. 13-20. First, the Act by its plain terms does not limit or even speak to the scope of state court jurisdiction. It only limits the jurisdiction of federal "district courts" in state tax matters. 28 U.S.C. § 1341.

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amicus party devoted all 21 pages of its brief to this issue; and a significant amount of oral argument and questioning from the Bench was devoted to this issue. What Respondents apparently mean to suggest is that the Florida Supreme Court did not devote much of its *opinion* to this issue. While acknowledging that the § 1983 question had been properly raised and briefed, 646 So.2d at 720, 725, the Court inexplicably declined to grant relief on the ground that "the statute must be declared facially unconstitutional" on federal grounds. *Id.* at 725. This explanation, however, does not preclude further review by this Court. *See Chambers v. Mississippi*, 410 U.S. 284, 290 n. 3 (1973); *Street v. New York*, 394 U.S. 576, 581-85 (1969); *New York ex rel. Bryant v. Zimmermann*, 278 U.S. 63, 67 (1928). Indeed, Respondents have not argued otherwise.

Second, Respondents' interpretation of the Act works a repeal by implication of § 1983's application to unconstitutional state taxes. *See* 42 U.S.C. § 1983 (applying to the "deprivation of *any*" constitutional rights) (emphasis added). Here, Petitioners initially sought § 1983 relief in federal court, but their claim was dismissed under the Tax Injunction Act. Petitioners then filed the same claim in state court, but it was rejected there as well. Respondents' interpretation of the Act thus prevented Petitioners from filing their § 1983 claim in *any* court, thereby repealing § 1983's application to an unconstitutional state tax. Not one of the requirements for such a repeal by implication, however, has been met; indeed, Respondents have not even attempted to meet such requirements. *See Morton v. Mancari*, 417 U.S. 535, 550 (1974) (requiring an "intention to repeal" or an "irreconcilable" conflict between two statutes); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1017 (1984) (repeals by implication are highly "disfavored") (internal quotations omitted). In the final analysis, the Tax Injunction Act simply does not deprive individual taxpayers of relief under § 1983 and § 1988 from unconstitutional state taxes. Respondents err in arguing to the contrary.

Respondents also err in claiming that "[t]he states are all in unison" on this issue, that "there is no conflict over this point among the state courts." Opp Br. 12, 20-21. This argument overlooks the Court's grant of certiorari in *National Private Truck Council. Inc. v. Oklahoma Tax Commission*, No. 94-88 (Jan. 6, 1995), which itself suggests that a conflict exists among state courts on this question.[2] Moreover, in claiming no conflict, Respondents merely cite state court cases that are consistent with the Florida Supreme Court's decision. They make no effort to

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[2] "State courts have split on whether, in a State tax dispute, a plaintiff may maintain a § 1983 action where an adequate State remedy exists. . . . Further, the United States Supreme Court has recently granted certiorari in the case of *Private Truck Council of Am., Inc. v. Oklahoma Tax Comm'n.* . . . [T]he law in this area is uncomfortably unsettled. . . ." *Perini Corp. v. Commissioner*, 647 N.E.2d 52, 58-59 (Mass. 1995) (citations omitted).

discuss, much less acknowledge, the state court cases cited by Petitioners that go the other way.[3] Plainly, in short, there is a sharp conflict among the states on this issue; the Court recognized the importance of that conflict in granting certiorari in *National Private Truck Council*; and *National Private Truck Council* raises the same issue that is presented in this case.[4]

Petitioners ask the Court to grant certiorari and to set the case for argument. In the alternative, they request the Court to grant certiorari in the case, vacate the decision below, and remand the case for reconsideration in light of the Court's disposition of *National Private Truck Council*.

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[3] *Compare Bloomingdale's By Mail Ltd. v. Huddleston*, 848 S.W.2d 52 (Tenn. 1992), *cert. denied*, 113 S.Ct. 3002 (1993), *and Murtagh v. County of Berks*, 634 A.2d 179 (Pa. 1993), *cert. denied*, 114 S.Ct. 1397 (1994), which required § 1983 and § 1988 claims filed in state tax cases to be entertained in state court, *with Private Truck Council of America, Inc. v. Oklahoma Tax Comm'n*, 879 P.2d 137 (Okla. 1994) *cert. granted*, 115 S. Ct. 714 (1995), and *North Dakota v. Quill Corp.*, 500 N.W.2d 196 (N.D.), *cert. denied*, 114 S.Ct. 173 (1993), which declined to entertain § 1983 and § 1988 claims in state court in state tax cases. *See also General Motors Corp. v. City of Linden*, 653 A.2d 568, 574 (N.J. Super. 1995) (holding that state court is proper forum for a § 1983 action in a tax case) and *Bielski v. Zorn*, 627 N.E.2d 880, 888 (Ind. Tax 1994) (holding state board of tax commissioners has jurisdiction over § 1983 claims in tax cases).

[4] In *National Private Truck Council*, it is true, the taxpayers were corporations, whereas in this case they are individuals. It is unclear why that distinction would affect the scope of the right to file a § 1983 and § 1988 action in state court in state-tax cases. But, to the extent such a distinction exists, the plight of the individual who may not rely on § 1983 to strike an unconstitutional tax and on § 1988 to recoup attorney's fees for doing so is arguably worse than that of a corporation.

CONCLUSION

For the foregoing reasons and those set forth in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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